

**IN THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
IN THE SUB-REGISTRY OF MTWARA
AT MTWARA**

LAND APPEAL NO. 24 OF 2022

(Arising from the District Land and Housing Tribunal for Mtwara at Mtwara in
Land Application No. 09/2021 dated 18th November, 2022)

**MUSSA BAKARI CHAMPUNGA (Administrator of the Estates of the Late
Bakari Athumani Champunga) ----- APPELLANT**

VERSUS

**ZUHURA MOHAMEDI (Administrator of the Estates of the Late Ahmed
Swalehe) ----- RESPONDENT**

JUDGEMENT

Date of last Order: 19.09.2023

Date of Judgment: 23.02.2024

Ebrahim, J.:

This appeal arises from the decision made in Land Application No. 09 of 2021 at the District Land and Housing Tribunal for Mtwara at Mtwara (Hereinafter referred to as the tribunal) dated 18th November 2022. The said application was filed in the Tribunal by the respondent against the appellant in the instant appeal. The claim of the respondent before the Tribunal was on unsurveyed land. She

averred that her late husband bought the unsurveyed land located at Dinduma Shuleni Village at Tandahimba District from the appellant's brother Abdalah Bakari Champunga on 09.03.1996 for a consideration of TZS. 90,000/=. The respondent tendered **exhibit P1** (sale agreement) to that effect. On 19.01.1998 her late husband bought another piece of unsurveyed land adjacent to the disputed land from Musa Mohamedi Namangwangwa for a consideration of TZS. 90,000/=. The respondent tendered **exhibit P2** (sale agreement).

The respondent called one **Abdallah Mussa Nambalema** as her witness who testified as SM2. **SM2** testified to have witnessed the sale of the disputed land as a Village Executive Officer.

Defending his position, the appellant testifying as **SU1** told the trial Tribunal that the disputed land was the property of the late Bakari Athumani Champunga. He cultivated a virgin land and later planted different crops and cashew nut trees until 1993 when he passed away. After his death, he was appointed as an administrator of the estate of Bakari Athumani Champunga. Before that, his late uncle Swalehe Athumani Champunga was taking care of the disputed land on the reasons that SU5 was still young when their late

father died. It was year 2017 when SU5 asked about her father's properties that the dispute arose.

SU2, Abdallah Bakari Champunga whom the respondent contended that her late husband Ahmed Swalehe bought the disputed land from; testified before the trial Tribunal that they inherited the disputed land from their late father Bakari Athumani Champunga. He said he did not sell the disputed land to the respondent. After a full trial, the DLHT decided in favour of the respondent.

Discontented by the decision of the Tribunal, the appellant lodged an appeal in this court raising six grounds of appeal. In essence, what could be gathered from the grounds of appeal and the whole case in general, the bone of contention is on the legal ownership of the disputed land.

Hearing of the appeal proceeded by filing written submissions. The appellant appeared in person unrepresented while the respondent had the service of Mr. Gide Magila, the learned advocate. I shall address the grounds of appeal generally.

In adjudicating this case and being a civil matter, I shall be guided by the cardinal principle of the law that "he who alleges must

prove". During the trial, the respondent sought Italic to be declared as the lawful owner of the disputed land. Therefore, the onus of proving ownership of the suit land was upon her . This position was stated in **Godfrey Sayi vs Anna Siame as Legal Representative of the Late Mary Mndolwa**, Civil Appeal No. 114 of 2014 (CAT) (unreported) the Court of Appeal said that:

"it is cherished principle of law that, generally, in civil cases, the burden of proof lies on the party who alleges anything in his favour. We are fortified in our view by the provision of section 110 and 111 of the Law of Evidence Act [Cap. 6 R.E. 2002] which among other things states:

110 Whoever desire any court to give judgment as to any legal right or liability depend on existence of facts which he asserts must prove that those facts exist

111. The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side."

Nevertheless, this being the first appeal, this Court has a duty to subject the entire evidence to re-evaluation and come to its own conclusion; aware of the necessity to do this cautiously acknowledging that the trial Tribunal was a better position to see, hear, and appreciate the evidence; see **Tanzania Sewing Machine**

vs Njake Enterprises Ltd (Civil Appeal No 15 of 2016) [2016] TZCA 2041 (27 October 2016).

The respondent alleged that her late husband acquired the disputed land in terms of the aforesaid averments. Besides, her oral account, the respondent as well, tendered documentary exhibits in a bid to establish how her husband had purchased the disputed land. Since she alleged to have purchased the land in pieces from the appellant's brother and another person, exhibit P2 (sale agreement) was neither signed by the seller (SU2) nor the buyer but only SM2 (VEO). The sale agreements therefore, i.e, exhibits P1 and P2 lack as then ticity to prove such transactions.

I seek inspiration from a persuasive case of **Janeth Ngowi Vs Patrick Mlenga**, Land Appeal No. 253 Of 2021 HC- Land Division, where it was observed that:

"In order to prevent future disputes, it is the practice that parties to the contract to have witnesses to assist to reinforce the validity and authenticity of the contract, Idyllically, a witness is an additional layer of security, whenever there is a dispute between the parties, the witnesses

are called to verify the authenticity of the contract."

Tailoring the requirement of the burden of proof with the facts of this case, the respondent did not prove to be the lawful owner of the disputed land.

Another issue is that the trial Tribunal wrongly proceeded to determine the issue of ownership of the disputed land despite having found and declared that the seller of the disputed land had no locus stand to sell the disputed land. It is a cardinal principle of law that an appointed administrator or executor is a qualified person in law to deal with the property of the deceased. Furthermore, among other rights and duties of the administrator, he/she can sue or be sued. The position has been held in the case of **Mohamed Hassan vs Mayase Mzee & Mwanahawa Mzee** 1994 TLR 225 CA, where it was observed that: -

"Administrator is the person who has mandate to deal with the deceased's properties"

To the contrary, a person has no right or is not entitled to administer the rights belonging to the deceased at the moment after his/her death in respect of the properties. However, as rightly argued by the

appellant the trial Tribunal went on determining the ownership by declaring the respondent as a lawful owner of the disputed land while knowing that the seller was not an administrator of the estates of the late Bakari Athumani Champunga. The analysis of the Hon. Chairman was inappropriate in the circumstance of this case. It could have sufficed for Hon. Chairman to dispose of the suit on the ground of locus standi of the seller on the disputed land.

In the circumstances therefore, I allow the appeal and I hereby set aside the decision of the District Land and Housing Tribunal with costs. I proceed to declare the appellant as a rightful owner of the suit land and the respondent or its agents are strictly restrained from interfering with the disputed land.

Order accordingly.




R.A Ebrahim
Judge.

23.02.2024
Mtwara.